

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

	)	
In the Matter of	)	
	)	CPSC Docket No.
JOHNSON HEALTH TECH CO., LTD.	)	
and HORIZON FITNESS, INC.	)	
	)	

**SETTLEMENT AGREEMENT AND ORDER**

1. Johnson Health Tech Co., Ltd. and Horizon Fitness, Inc. and (hereinafter, “Johnson”, “Horizon” or collectively “Respondents”) enter into this Settlement Agreement and Order (hereinafter “Settlement Agreement” or “Agreement”) with the staff of the Consumer Product Safety Commission (hereinafter “Commission”), and agree to the entry of the attached Order incorporated by reference herein. The Settlement Agreement resolves the Commission staff’s allegations set forth regarding reporting violations of the Respondents with respect to all Johnson treadmills manufactured with the Asia Star motor control board.

**I. THE PARTIES**

2. The Commission is an independent federal regulatory commission responsible for the enforcement of the Consumer Product Safety Commission Act (“CPSA”), 15 U.S.C. §§ 2051-2084.

3. Johnson is the manufacturer of treadmills and other fitness equipment with its principal office located at 26, Ching Chuan Road, Taya Hsiang, Taichung Hsien, 42844, Taiwan, R.O.C.

4. Horizon was incorporated on August 1, 1999. It is organized and existing under the laws of Wisconsin with its principal office located at 800 Burton Boulevard, DeForest, Wisconsin, 53532. Horizon imports and sells treadmills and other fitness equipment manufactured by Johnson. Horizon is 87% owned by Johnson International Holding Corp., Ltd. which is a subsidiary of Johnson.

## **II. STAFF ALLEGATIONS**

5. Section 15(b) of the CPSA, 15 U.S.C. § 2064(b) requires that every manufacturer, importer, distributor and retailer who obtains information that reasonably supports the conclusion that a consumer product (1) contains a defect which could create a substantial product hazard, or (2) creates an unreasonable risk of serious injury or death, immediately inform the Commission of the defect or risk.

6. Between August 2000 and June 2001, Johnson manufactured treadmills with a motor control board (“MCB”) manufactured by subcontractor, Asia Star.

7. Between September 2000 and December 2001, Horizon imported and distributed nationwide approximately 10,644 Johnson treadmills with the Asia Star MCB under the model names, “Paragon”, “Quantum” and “Omega” (hereinafter “treadmills”).

8. The treadmills are “consumer products” which were “distributed in commerce” as those terms are defined in section 3(a)(1), (11) and (12) of the CPSA, 15 U.S.C. § 2052(a)(1),(11) and (12).

9. Johnson and Horizon are “manufacturers” of the treadmills as that term is defined in section 3(a)(4) of the CPSA, 15 U.S.C. § 2052(4).

10. The treadmills are defective because a component in the MCB can overheat causing (1) a sudden acceleration of the walking belt between 12.9 and 16.5

miles per hour (also known as a “runaway” situation) and (2) the safety stop key to fail. These defects could cause consumers to suffer serious injury.

11. Between January 2001 and January 14, 2002 (date of Respondents’ full report), Respondents learned of 180 incidents of “runaway” treadmills and safety stop key failures. Fifteen of these reports alleged injury including sprains, strains, a torn rotator cuff, bruises and serious friction burns.

12. In response to consumer complaints, between January 2001 and January 14, 2002, Respondents made three modifications to the treadmill, first in February 2001, then in March 2001, and finally in May 2001, in an attempt to correct the defects. At none of these points, did Respondents provide the Commission with a full report.

13. On January 11, 2002, the Commission staff contacted Horizon to schedule an establishment inspection. Three days later, on January 14, 2002, Respondents submitted a full report.

14. Although Respondents had obtained sufficient information to reasonably support the conclusion that these treadmills (1) contained defects which could create a substantial product hazard or (2) created an unreasonable risk of serious injury or death, they failed to timely report such information to the Commission, as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

15. By failing to timely report to the Commission pursuant to section 15(b) of the CPSA, Respondents violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

16. Respondents committed this failure to report to the Commission “knowingly” as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), thus subjecting Respondents to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

### **III. RESPONSE OF JOHNSON AND HORIZON**

17. Respondents deny the staff allegations in paragraphs 5 through 16.

18. Respondents deny that the treadmills contained defects which could create a substantial product hazard within the meaning of sections 15(a) and 15(b) of the CPSA, 15 U.S.C. §§ 2064(a) and 2064(b).

19. Respondents deny that the treadmills created an unreasonable risk of serious injury or death pursuant to section 15(b) of the CPSC, 15 U.S.C. § 2064(b) and deny the allegations of injury in paragraph 10 above.

20. Respondents deny that they knowingly violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. § 2064(b). They deny that the information available to them reasonably supported the conclusion that the treadmills contained a defect which could create a substantial product hazard or that the treadmills created an unreasonable risk of serious injury or death. They deny that a report was required under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

21. Although Respondents do not believe the treadmills had a reportable defect or risk, they diligently investigated and addressed the circumstances relating to the consumer complaints about the treadmills and fully responded to all consumer complaints and, by May of 2001, they had designed a corrective measure that fully addressed any of the alleged defects.

22. The Respondents had already decided to file a full report with the CPSC and to implement a recall of the treadmills prior to being contacted by the CPSC on January 11, 2002. Respondents' full report to the CPSC and voluntary recall did not

result from the CPSC investigation, but instead was part of their ongoing effort to fully address and respond to customer complaints regarding the treadmills.

23. Respondents agree to this Settlement Agreement and Order solely to avoid incurring additional legal costs and expenses. They do not admit to any fault, any liability, any violation of any law or any wrongdoing with respect to the treadmills. Their willingness to enter into this Settlement Agreement and Order does not constitute, nor is it evidence of, an admission by them of any fault, any liability, any violation of any law or any wrongdoing.

#### **IV. AGREEMENT OF THE PARTIES**

24. The Commission has jurisdiction over Respondents and the subject matter of this Settlement Agreement and Order under the CPSA, 15 U.S.C. §§2051-2084.

25. Respondents agree to be bound by, and comply with, this Settlement Agreement and Order.

26. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondents, or a determination by the Commission, that Respondents knowingly violated the CPSA's reporting requirement.

27. In settlement of the staff's allegations, Respondents agree to pay a civil penalty of five hundred thousand 00/100 dollars (\$500,000) in full settlement of this matter. The penalty shall be paid in four installments. The first payment of \$125,000.00 shall be paid within twenty (20) calendar days of service of the final Settlement Agreement and Order. The second payment of \$125,000.00 shall be paid within 110 days of such service. The third payment of \$125,000.00 shall be paid within 200 days of such service. The fourth and final payment of \$125,000.00 shall be paid within 290 days of such service.

28. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16<sup>th</sup> day after the date it is published in the *Federal Register*.

29. Upon final acceptance of this Agreement by the Commission, and issuance of the Final Order, Respondents knowingly, voluntarily, and completely waive any rights they may have in this matter (1) to an administrative hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondents failed to comply with CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

30. The Commission may publicize the terms of the Settlement Agreement and Order.

31. The Commission's Order in this matter is issued under the provisions of CPSA, 15 U.S.C. §§ 2051-2084. Violation of this Order may subject Respondents to appropriate legal action.

32. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

33. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or

future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Respondents determine that severing the provision materially affects the purpose of the Settlement Agreement and Order.

34. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced and approved by the Commission.

35. The provisions of this Settlement Agreement and Order shall apply to Respondents and each of their successors and assigns.

**JOHNSON HEALTH TECH CO., LTD.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jason Lo, Chief Executive Officer

**HORIZON FITNESS, INC.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Robert Whip, President

\_\_\_\_\_  
Thomas L. Skalmoski, Esquire  
Attorney for Respondents Horizon and Johnson

**The U.S. CONSUMER PRODUCT SAFETY COMMISSION**

Alan H. Schoem, Director  
Office of Compliance

Eric L. Stone, Director

Legal Division, Office of Compliance

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Michelle Faust Gillice, Trial Attorney  
Belinda V. Bell, Trial Attorney  
Legal Division, Office of Compliance

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**ORDER**

Upon consideration of the Settlement Agreement between Respondents Johnson Health Tech Co., Ltd (“Johnson”) and Horizon Fitness, Inc. (“Horizon”) and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Johnson and Horizon, and it appearing that the Settlement Agreement and Order is in the public interest, it is

ORDERED that the Settlement Agreement be, and hereby is, accepted, and it is

FURTHER ORDERED that Johnson and Horizon shall pay the United States Treasury a civil penalty of five hundred thousand 00/100 dollars (\$500,000) in four installments. The first payment of \$125,000.00 shall be paid within twenty (20) calendar days of service of the final Settlement Agreement and Order. The second payment of \$125,000.00 shall be paid within 110 days of such service. The third payment of \$125,000.00 shall be paid within 200 days of such service. The fourth and final payment of \$125,000.00 shall be paid within 290 days of such service. Upon failure of Respondents Johnson and Horizon to make a payment or upon the making of a late payment by Respondents Johnson and Horizon (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be

paid at the federal legal rate of interest under the provisions of 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

BY ORDER OF THE COMMISSION:

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Todd A. Stevenson, Secretary  
Consumer Product Safety Commission

Finally accepted and Final Order issued on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

BY ORDER OF THE COMMISSION:

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Todd A. Stevenson, Secretary  
Consumer Product Safety Commission